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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,199	10/28/2003	Andrew Valencia	062891.1179	4522
5073	7590	10/16/2008		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				
EXAMINER				
NG, CHRISTINE Y				
ART UNIT		PAPER NUMBER		
2416				
NOTIFICATION DATE		DELIVERY MODE		
10/16/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptomail1@bakerbotts.com  
glenda.orrantia@bakerbotts.com

### Office Action Summary

**Application No.**

10/695,199

**Applicant(s)**

VALENCIA, ANDREW

**Examiner**

CHRISTINE NG

**Art Unit**

2416

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7, 8 and 19 is/are allowed.
- 6) ☒ Claim(s) 1, 6, 9-11, 16 and 20-26 is/are rejected.
- 7) ☒ Claim(s) 2-5, 12-15, 17, 18 and 27-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. In view of the notice of appeal filed on April 14, 2008, PROSECUTION IS HEREBY REOPENED. A new ground of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, 9-11, 16, 20 and 21-26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,463,616 to Kruse et al.

Referring to claims 1, 11, 16 and 26, Kruse et al disclose in Figures 9 and 10 a device (apparatus 210) for processing packets in a network, comprising:

A receiver (in apparatus 210) operable to receive a packet flow, the packet flow including encoded information (voice packets).

A detector (in micro-controller 242) operable to determine if the encoded information in the packet flow includes a pause. A voice packet is "paused" if the entire voice packet cannot fit into an available bandwidth, since the voice packet cannot be transmitted yet if it does not fit into the available bandwidth.

A processor (in micro-controller 242) operable to adjust fragmentation of packets in the packet flow according to whether the encoded information in the packet flow includes the pause. If the entire voice packet cannot fit into the available bandwidth, it is divided into smaller packets. Once the voice packet is divided into smaller packets, it can be transmitted and is no longer "paused". Refer to Column 3, lines 15-28; Column 10, line 35 to Column 11, line 25; Column 12, line 65 to Column 13, line 54; and Column 21, lines 23-33.

Referring to claim 6, Kruse et al disclose in Figures 9 and 10 that the receiver receives a plurality of packet flows, each of the plurality of packet flows including encoded information, the detector is operable to determine if the encoded information of each of the packet flows includes a pause, and the processor is operable to adjust fragmentation of each of the plurality of packet flows according to whether any of the packet flows includes the pause. Apparatus 210 receives a plurality of flows from

computing gaming device 216 or telephone 220. Refer to the rejection of claims 1, 11, 16 and 26.

Referring to claim 9, Kruse et al disclose in Figures 9 and 10 that a packet of the packet flow indicates whether the packet flow includes the pause. If a voice packet exceeds the available bandwidth, the part of the voice that does not fit into the available bandwidth indicates that the voice packet includes a pause since it cannot be transmitted yet. Refer to Column 3, lines 15-28.

Referring to claims 10 and 20, Kruse et al disclose in Figures 9 and 10 determining whether the packet flow includes the pause in response to a receipt frequency of packets in the packet flow. If the voice packet exceeds the available bandwidth (receipt frequency of packets is too high), the packet is fragmented. Refer to Column 3, lines 15-28.

Referring to claim 21, Kruse et al disclose in Figures 9 and 10 a system for processing packets in a network, comprising:

A sender (computing gaming device 216 or telephone 220) operable to place information in packets of a packet flow, the sender operable to provide an indication as to whether the information in the packet flow includes a pause. If a voice packet exceeds the available bandwidth, the part of the voice that does not fit into the available bandwidth indicates that the voice packet includes a pause since it cannot be transmitted yet. Refer to Column 3, lines 15-28.

A linking device (apparatus 210) operable to receive the packet flow from the sender, the linking device operable to adjust fragmentation of packets in the packet flow according to whether the information in the packet flow includes the pause.

A receiver (computing gaming device 218 or telephone 222) operable to receive the packet flow from the linking device. A voice packet is "paused" if the entire voice packet cannot fit into an available bandwidth, since the voice packet cannot be transmitted yet if it does not fit into the available bandwidth. Once the voice packet is divided into smaller packets, it can be transmitted and is no longer "paused". Refer to Column 3, lines 15-28; Column 10, line 35 to Column 11, line 25; Column 12, line 65 to Column 13, line 54; and Column 21, lines 23-33.

Referring to claim 22, Kruse et al disclose in Figures 9 and 10 that the sender is operable to identify the pause in the information. If a voice packet exceeds the available bandwidth, the part of the voice that does not fit into the available bandwidth indicates that the voice packet includes a pause since it cannot be transmitted yet. Refer to Column 3, lines 15-28.

Referring to claim 23, Kruse et al disclose in Figures 9 and 10 that the sender is operable to classify the pause identified in the information. The system determines whether or not the voice packet exceeds the available bandwidth. Refer to Column 3, lines 15-28.

Referring to claim 24, Kruse et al disclose in Figures 9 and 10 that the pause is classified according to whether one or more (one) predefined limits (available

bandwidth) are exceeded. The system determines whether or not the voice packet exceeds the available bandwidth. Refer to Column 3, lines 15-28.

Referring to claim 25, Kruse et al do not disclose that the sender is operable to adjust one or more bits a packet in the packet flow to indicate a presence and a classification of the pause. If a voice packet exceeds the available bandwidth, the part of the voice that does not fit into the available bandwidth indicates that the voice packet includes a pause since it cannot be transmitted yet. The voice packets are in the form of bits. Refer to Column 3, lines 15-28.

***Allowable Subject Matter***

4. Claims 7, 8 and 19 are allowed.
5. Claims 2-5, 12-15, 17, 18 and 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTINE NG whose telephone number is (571)272-3124. The examiner can normally be reached on M-F; 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571) 272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

C. Ng  
October 6, 2008

/FIRMIN BACKER/  
Supervisory Patent Examiner, Art Unit 2416